

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LUTHER STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:10CV1505 HEA
)	
COTTRELL, INC.,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Motion for Summary Judgment on Duty, Contract, Specifications, Failure to Warn and Statute of Limitations, [Doc. No. 56]. Plaintiff opposes the Motion. For the reasons set forth below, the Motion is denied.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment may be granted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of

law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has met this burden, the nonmoving party may not rest on the allegations in its pleading but by affidavit or other evidence must set forth specific facts showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e). In determining summary judgment, the facts and the inferences from those facts are viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). At the summary judgment stage, courts do not weigh the evidence and decide the truth of the matter, but rather determine if there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. Rule 56(c) mandates the entry of summary judgment against a party, if after adequate time for discovery, that party fails to make a showing sufficient to establish the existence of an essential element of the case that the party will have the burden of proving at trial. *Celotex*, 477 U.S. at 322-23

The court has reviewed the record before it. This is a slip and fall on a car hauler case wherein Plaintiff alleges that Defendant's rig was unreasonably dangerous and as such, Defendant is liable for the injuries Plaintiff sustained as a result of his fall.

Defendant contends it is entitled to summary judgment on the issues of its


duty to Plaintiff, contract specifications, failure to warn and the statute of limitations contained in its warranty.

Based on the entire record, the Defendant is not entitled to summary judgment. Considering all of the facts, together with inferences to be drawn therefrom, it appears that genuine issues of material fact remain. Summary judgment is therefore, not appropriate at this time. Accordingly, the Defendant's Motion for Summary Judgment, [Doc. No. 56], is denied.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment on Duty, Contract, Specifications, Failure to Warn and Statute of Limitations, [Doc. No. 56], is denied.

Dated this 7th day of February, 2013.

A handwritten signature in cursive script, reading "Henry Edward Autrey", written in black ink. The signature is positioned above a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE